

UNITED STATES OF AMERICA,	DOCKET NO. 21-CR-010-F
Plaintiff,	
vs.	
ANTHONY JEFFREY BROCHU,	Cheyenne, Wyoming
Defendant.	May 20, 2021
	10:03 a.m.

BEFORE THE HONORABLE NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE

APPEARANCES BY ZOOM:

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Docket 21-CR-010-F OBJECTIONS TO PSR

3

1 (Proceedings commenced 10:03 a.m., May 20, 2021.)

2 THE COURT: Please be seated.

3 COURTROOM DEPUTY: In criminal matter

4 Case No. 21-CR-10-F.

5 MR. COPPOM: Good morning, Your Honor, Jonathan Coppom
6 for the United States.

7 MR. DECKENBACH: And good morning, Your Honor. Jordan
8 Deckenbach appearing on behalf of Mr. Anthony Brochu who
9 appears before the Court in custody.

10 THE COURT: Good morning. Counsel, please approach.

11 * * * * *

12 (Proceedings at sidebar not transcribed.)

13 * * * * *

14 THE COURT: Mr. Deckenbach, have you and your client
15 read and discussed the revised Presentence Report?

16 MR. DECKENBACH: We have, Your Honor.

17 THE COURT: Are there any factual issues concerning
18 the report?

19 MR. DECKENBACH: No, Your Honor.

20 THE COURT: Anything from the Government?

21 MR. COPPOM: No, Your Honor.

22 THE COURT: Other than motions for departure or
23 variance, are there legal issues relating to the guideline
24 calculation?

25 MR. DECKENBACH: No, Your Honor.

Docket 21-CR-010-F GUIDELINE CALCULATIONS

4

1 THE COURT: For the Government?

2 MR. COPPOM: No, Your Honor.

3 THE COURT: All right. I'll put the guideline
4 calculation on the record. It begins at page 7 of the PSR.
5 We're here for sentencing for felon in possession which begins
6 at a base offense level of 14. The defendant receives a
7 two-level reduction for his timely acceptance of
8 responsibility, dropping him to a total offense level of 12.

9 In terms of countable criminal convictions, his first
10 countable conviction is a 2011 retail theft, criminal mischief
11 conviction. Then we have a 2011 possession of drug
12 paraphernalia and possession of marijuana conviction. Both of
13 those convictions each accrue one point.

14 We have a 2018 third offense possession of a
15 controlled substance felony. That accrues one point. He has a
16 subtotal criminal history score of 3. However, he was under a
17 criminal justice sentence out of state court when the current
18 offense conduct was committed. That adds an additional two
19 points.

20 With a criminal history score of 5, he's placed in
21 Criminal History Category III. At offense level 12, Criminal
22 History Category III, the guideline range is 15 to 21 months.

23 Any objections or corrections to the guidelines as
24 they stand before motions for departure or variance? Mr.
25 Deckenbach?

1 MR. DECKENBACH: No, Your Honor.

2 THE COURT: For the Government?

3 MR. COPPOM: No, Your Honor.

4 THE COURT: All right.

5 Those, then, will be the Court's initial conclusions.

6 We do have a sentencing memo in this case on behalf of
7 defendant which raises, among other arguments, as I understand
8 it, a motion for departure for overrepresentation.

9 Are there other departure arguments that I may have
10 missed in the memo?

11 MR. DECKENBACH: Not for departure, Your Honor.

12 THE COURT: All right. I've read the memo, but you're
13 certainly welcome to hit the high points or argue the
14 overrepresentation.

15 MR. DECKENBACH: Thank you, Your Honor. If not a
16 departure, I think the arguments laid out in the memo certainly
17 support a downward variance. As outlined in the memo,
18 Mr. Brochu's very limited criminal history all really stem from
19 his mental health issues and his attempts to medicate that
20 illicitly. And the two 2011 convictions are quite old and
21 there's not a lot of intervening criminal conduct in between
22 those and the 2018 conviction which, itself, was a mental
23 health crisis situation which law enforcement responded to.

24 So we ask that you find grounds for departure to a
25 time-served sentence, and if not a departure, at least consider

1 that argument in support of the variance.

2 THE COURT: All right. And we will hear further
3 arguments on the variance from the Government on the departure
4 argument.

5 Mr. Coppom.

6 MR. COPPOM: Your Honor, I'll just let the Court know
7 at this time I was unable to access the sentencing memorandum
8 filed by Mr. Deckenbach. That's fine, and I'll waive any need
9 to see it.

10 Regarding an argument that Mr. Brochu's criminal
11 history is overrepresented, Your Honor, I don't think that's
12 borne out by the facts in this case. The guidelines are very
13 specific about how they are applied and what sorts of
14 convictions are countable versus not countable.

15 One of the sentencing factors ultimately is sentencing
16 disparities, whether defendants are being treated the same
17 across the board. And because these convictions were countable
18 convictions, I would just respectfully argue that Mr. Brochu
19 should have them counted like any other defendant in front of
20 this Court. Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 Well, I have read the sentencing statement. Much of
23 the thrust of the statement I think is perhaps more properly
24 characterized as a motion for variance. From my perspective in
25 looking at -- in considering a defendant and his criminal

1 history, even though the earlier convictions are older
2 convictions, they are countable. There's nothing about those
3 convictions that strikes the Court as not representative of the
4 defendant's criminality, and I think the same about the
5 conviction in 2018 and the probation violation associated with
6 that conviction.

7 While defendant's circumstances were or appear to have
8 been considered by the sentencing court in that case, it was a
9 felony case and he failed on supervision associated with that
10 felony case for reasons unrelated or additional reasons beyond
11 the commission of a new offense.

12 It appears to me as though each of the points
13 properly -- is properly counted, as there are no objections to
14 the countable score, and defendant seems well-placed in
15 Criminal History Category III. This isn't an instance where he
16 is teetering on the edge between II and III, and I do think
17 category III best represents his potential for recidivism and
18 criminal thinking.

19 Consequently, I will deny the motion for departure and
20 we will move to the motion for variance. I know a portion of
21 your argument touched on the arguments associated with his
22 circumstances, his mental health history, his substance abuse
23 and use, the mental health crises that have resulted in his
24 encounters with law enforcement.

25 I do have the letters and have read the letters from

1 family and friends, but I certainly would welcome additional
2 arguments on the motion for variance.

3 MR. DECKENBACH: Thank you, Your Honor. As the Court
4 has reviewed that, I won't go on too long here. But the
5 guidelines are advisory. They are there to make sure that
6 defendants are treated equally. However, the law asks the
7 Court, as the Court is well aware, to consider the individual
8 defendant's history and characteristics and the public policy
9 interest in defendants, deterring future criminal activity as
10 well as keeping the public safe.

11 And with Mr. Brochu, a sentence of time served today
12 is going to answer all of those considerations. Sending him to
13 BOP and federal prison is not going to deter him. He
14 understands how he is not to have a firearm under any
15 circumstances. His lesson has been learned, sitting almost
16 seven months in custody, 204 days as of today. Going to the
17 BOP is not going to help him, his mental health. It is not
18 going to help him address his addictions.

19 Truly, what is going to help him is continued
20 counseling which can resume starting tomorrow if the Court is
21 to give him a time served. He has a home that he can move into
22 tomorrow with his mother, you know. He turned 40 two days ago.
23 And as someone who is quickly approaching his 40th birthday,
24 the point -- kind of the halfway point where you kind of look
25 forward, look back and see what you've accomplished, what you

1 have failed to accomplish, and it is a time to reflect and look
2 forward. And Mr. Brochu is doing that. He's looking forward
3 to a life where he can continue to work with professionals in
4 curbing his addiction and pursuing appropriate medication for
5 his mental health issues and he can work and provide for
6 himself as well as his loved ones.

7 So that's the opportunity you would be affording him
8 immediately by giving him time served. He is not a threat to
9 the public. There's going to be no danger by giving him such a
10 sentence. He is not a threat to anyone, Your Honor. And his
11 interests, as well as the public interest, would be best served
12 with a sentence of time served.

13 THE COURT: All right. Thank you.

14 For the Government.

15 MR. COPPOM: Thank you, Your Honor. At the outset
16 I'll, I guess, make a small confession which is I struggle
17 personally sometimes with some of the crimes we charge, like
18 felon in possession, because it is hard to really know how
19 culpable someone is. Mr. Brochu has certainly violated a law
20 that Congress felt important to enact to keep firearms out of
21 the hands of felons, but even within that crime we do see a
22 spectrum in terms of how people behave when they're perhaps
23 violating the law.

24 Some are more egregious than others. Mr. Brochu, he
25 has, it appears, some substance abuse issues and some mental

1 health issues. That is something this Court needs to take into
2 account.

3 At the same time I will also note, Your Honor, that's
4 true of a lot of defendants who, obviously, come before this
5 Court. This Court knows that well more than me.

6 But at the end of the day, Mr. Brochu's conduct -- he
7 had a firearm, and he was in a public space with it. He did
8 not resist arrest or anything like that, so he did violate the
9 law, and he should be held accountable in some way.

10 I will also be candid, Your Honor. I'm frequently
11 relieved that I don't have to decide the exact sentence someone
12 receives, so everything Mr. Deckenbach said should be taken
13 under consideration. I don't have anything to add to it.

14 Under the terms of the plea agreement, Your Honor, I
15 am bound to recommend the low end of the guidelines in this
16 case, so that's what I will do. I would respectfully ask that
17 the Court sentence Mr. Brochu to 15 months which is the low end
18 of the guidelines. Not knowing what is a perfect sentence,
19 because that's impossible to ever know, that is a sentence that
20 is sufficient, but not greater than necessary, under the
21 factors in Section 3553(a). Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 Anything further from counsel?

24 As is my practice, I summarize the letters that I've
25 received and read.

1 Counsel, anything further before I go through that
2 summarization?

3 MR. DECKENBACH: No, Your Honor. Thank you.

4 THE COURT: All right. Thank you.

5 As noted with the sentencing statement from counsel, I
6 received several letters on defendant's behalf. I received a
7 letter from his mother, Ms. Brochu. She writes that the
8 defendant is her oldest son. She characterizes him as a
9 peacekeeper, someone who goes out of his way to help anyone in
10 need, kind and considerate, someone that she's proud of. She
11 writes about the tragedy where defendant lost his wife, and she
12 also writes about some concerns regarding reports and the
13 negative information the officer reports have.

14 She wants me to know that the family is a good
15 Christian family, that the defendant is honest. She does not
16 believe he will be a repeat offender. She believes last year
17 was very difficult on the defendant. She doesn't have kind
18 words to say about his wife, although I'm sure it was tragic as
19 well to her that the -- the circumstances of her death.

20 She is also sympathetic about his former wife's
21 disability and the pain. She writes that the defendant comes
22 from a supportive family. She looks forward to having him come
23 and stay with her in Powell. She notes he's a careful and --
24 caring and helpful person and that it would be a blessing to
25 her to have him close again.

1 She believes that he's paid for his wrongs, that he's
2 lost so much: His wife, his job, his apartment and many of his
3 belongings. She characterizes him in closing as a good, gentle
4 man.

5 Then I have a letter from Mr. Brochu, defendant's
6 father. As I understand it from Mr. Brochu's letter, he
7 adopted the defendant and they bonded. He characterizes the
8 defendant as someone quick to offer a comforting word or
9 helping hand. I found it curious that he characterized the
10 defendant as an average student, fair, and curious that he
11 numbered his paragraphs. I think that may be associated with
12 his military service.

13 He writes defendant had a lot of friends as a child.
14 He, too, remarks that theirs is a Christian family and he
15 characterizes the defendant as a decent, Christian man,
16 although I -- just on a note, not that this is negative in any
17 respect, but I found it curious that the defendant identified
18 his religion as "Other," and perhaps it just didn't come up and
19 that's what the mental health counselor noted, not knowing
20 exactly what to say.

21 He believes that the defendant is tuned into other
22 people's feelings. He acknowledged that the defendant has made
23 bad decisions, but he doesn't believe that he deserves any
24 sentence other than a time-served sentence. He believes the
25 defendant wasn't in his right mind during this time, perhaps

1 felt threatened by the world. But overall he characterizes him
2 as an open, caring man with a huge heart, not a threat to
3 anyone, any person, and hasn't shown violence towards anyone.

4 I have a letter from Ashton Munoz, the defendant's
5 brother. He characterizes defendant similarly, as someone kind
6 and trustworthy, someone who has gone through difficult
7 experiences. He believes the defendant had a momentary lapse
8 in judgment. He writes that the defendant will be released
9 ultimately to live with his mother in Powell who will provide a
10 stable and loving environment and help the defendant acquire
11 suitable employment and that the defendant will help in
12 providing family support and emotional stability.

13 I have a letter from Patrick Brochu, another brother,
14 who characterizes the defendant as very caring and humble,
15 willing to help and patient. This brother believes that he
16 faces -- that this charge is for violating the terms of his
17 probation and, of course, we all know it is not. This is a
18 separate offense. Nonetheless, the brother writes about the
19 loss the defendant suffered which he believes perhaps
20 contributed to him not thinking clearly. He writes that he's
21 kind and caring.

22 He, too, notes that the defendant will be staying with
23 his mother who will offer a stable environment and help find
24 employment and writes that he's missed very much.

25 And then I have a summary, as noted, that offers some

1 observations concerning defendant's drug, employment,
2 psychiatric challenges that are part of his life.

3 And then I do have the state supervising conditions
4 and then a Behavioral Health Center report, and that report
5 indicates that during that time in 2020, the view was that
6 defendant had made significant progress towards achieving his
7 goal. I think at that time perhaps it was to reduce anxiety,
8 perhaps other areas as well.

9 Just so I haven't missed any letters, are those the
10 letters that you're aware of?

11 MR. DECKENBACH: Yes, Your Honor.

12 THE COURT: All right. Anything further before I ask
13 your client if he has a statement?

14 MR. DECKENBACH: No, Your Honor. Thank you.

15 THE COURT: Mr. Brochu, is there anything that you
16 wish to say, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: If you could come forward. The court
19 reporter can take down your comments, but you will need to
20 speak into the microphone. Thank you. She's connected to the
21 microphone for her translation service.

22 THE DEFENDANT: Just, Your Honor, that I am a
23 God-fearing man. I am a firm believer in justice in our
24 system, and I know that it is -- justice will be found and that
25 the -- the letters pretty much do summarize -- summarize it up.

1 And I hope that you take it all into consideration when justice
2 is served today. And I appreciate your time, Your Honor.

3 THE COURT: Thank you, sir.

4 THE DEFENDANT: Thank you.

5 THE COURT: And just to note, unless I'm mistaken, I
6 believe defendant is here on a conditional plea. Is that
7 correct?

8 MR. DECKENBACH: That's correct, Your Honor.

9 THE COURT: All right. Well, this case presents some
10 challenges. Notwithstanding the conditions of supervision, I
11 have a difficult time in this day and age understanding how
12 someone adjudged a felon can believe he can have a gun and
13 possess a gun, notwithstanding state law. There's so much in
14 the news these days about additional restraints needed or not
15 needed associated with gun possession and the amount of guns we
16 have in our society. The one constant in all the discussions,
17 and unless or until the courts advise otherwise, is that felons
18 can't possess guns, just like felons can't vote; felons can't
19 run for office; felons are deported if they come from another
20 country. And these are -- this is the law of the land.

21 I certainly do understand and appreciate that the
22 defendant has some -- has had some real significant challenges
23 during this period, but even in Park County where I'm from,
24 gun-loving people seem to still understand that they cannot
25 carry guns and possess guns if they're felons. So that -- that

1 is notwithstanding the prosecutor's statements. And we do have
2 reductions for certain types of gun offenses associated with
3 the guideline calculation to reflect that, that not all
4 possessions by felons is the same.

5 But this, we have someone who has obvious mental
6 issues, in a country where we have gun violence on a day-by-day
7 basis, that also has substance abuse issues. And none of that
8 supports -- in addition to being a felon, none of that supports
9 or counsels having a gun in your waistband. That to me is just
10 un -- un -- you know, it is difficult for me to comprehend how
11 someone can go into a store or any public space, or even in his
12 home, with mental health challenges, substance abuse issues,
13 and a felony, on top of all of that to have a gun, particularly
14 with the backdrop of the last offense which was so very
15 dangerous to yourself and law enforcement.

16 While I expect the family's kind of whitewash of the
17 circumstance and characterizes -- in terms of characterizing
18 the defendant as not violent, he's obviously a violent person
19 vis-à-vis himself, if not others. And that encounter says it
20 all.

21 Honestly, I have to wonder, had the state court judge
22 imposed a harsher sentence would it not have made a better
23 impression or a more significant impression. It was, like, you
24 pled guilty to that felony and left with very little time, on
25 four years' probation, and just picked up where you were at

1 that point in time. And that, to me, makes no sense either.
2 Something should have changed in that -- in your thinking, that
3 you were not on the right path, when you found your wife's gun,
4 that you should not have it. Even having not been adjudged a
5 felon, someone with mental health and substance abuse problems
6 should not be carrying a gun.

7 I know that's not the law of the land, and I'm not in
8 the legislature, but that's a strongly held view. We are not
9 here to punish that conduct, but we are here to punish felon in
10 possession. So I'm here from the perspective that we have
11 somebody who is a danger and a risk. While a prison sentence
12 may not advance your mental health treatment or substance abuse
13 challenges, it deters future criminal conduct and it protects
14 the public and it protects yourself.

15 And I won't follow in the footsteps of the state court
16 judge and be lenient, particularly with a time-served sentence.
17 There's just nothing here -- there's nothing here that supports
18 that. Granted, you come from a very supportive, Christian
19 family, and that is your ace in the hole. That is your
20 strength. That is where you need to come back to. You need to
21 comply with your conditions of probation. You were given a
22 break and violated your conditions of probation.

23 So, that's a long way of saying that this is not going
24 to be a time-served sentence. It is not going to be a low-end
25 sentence because I think the punishment here needs to fit the

1 history and characteristics of the defendant as he presents
2 himself, which is a person with significant onboard challenges
3 of mental health and substance use. And those, combined with
4 not fully appreciating the circumstances of that -- of your
5 situation and then turns to possessing a gun when you could
6 have easily killed the officer in that 2018 encounter, or
7 yourself or everybody, it's just -- this picture is one that
8 just does not call out for leniency.

9 So with that, I will impose a mid-range sentence and a
10 three-year term of supervision to follow. I recognize this is
11 a conditional plea, and I'll advise on a Notice of Appeal so
12 that you can preserve the arguments that were made in the
13 motion to dismiss.

14 So with that, I will state disposition.

15 Pursuant to the Sentencing Reform Act of 1984, and
16 considering those factors set forth in 18 USC Section 3553(a),
17 it is the Judgment and Sentence of the Court that the defendant
18 Anthony Jeffrey Brochu is hereby sentenced to a term of 18
19 months in the custody of the Bureau of Prisons.

20 Upon release from custody, the defendant shall be
21 placed on supervised release for three years.

22 Within 72 hours of release from custody, the defendant
23 shall report in person to the probation office in the district
24 to which he's released.

25 While on supervised release, the defendant shall

1 comply with the mandatory and standard conditions of
2 supervision adopted by this court.

3 Further, in accordance with the factors set forth in
4 18 USC Section 3553(a), additional special conditions detailed
5 in paragraph 66 of the Presentence Report will be imposed in
6 order to address the nature and circumstances of the instant
7 offense and the defendant's documented history of substance
8 use, mental health problems and criminal history.

9 A search condition will be imposed in order to promote
10 public safety through effective oversight and to enforce the
11 other conditions of supervision and to achieve the desired
12 outcomes of supervision.

13 In accordance with 18 USC Section 3583(d), I find
14 these conditions are reasonably related to the deterrence of
15 criminal conduct, the protection of the public from further
16 crimes of the defendant and defendant's educational,
17 vocational, medical and other correctional needs.

18 Further, they involve no greater deprivation of
19 liberty than is reasonably necessary for the purposes of
20 deterring criminal activity, protecting the public and
21 promoting the defendant's rehabilitation and are consistent
22 with any pertinent policy statement issued by the Sentencing
23 Commission.

24 I find the defendant does not have the ability to pay
25 a fine, and no fine is ordered. It is ordered that the

1 defendant shall pay a special assessment fee in the amount of
2 \$100 which is due immediately. Payments for monetary
3 obligations shall be made payable by cashier's check or money
4 order to the Clerk of the District Court, 2120 Capitol Avenue,
5 Cheyenne, Wyoming, 82001.

6 The defendant shall participate in the Inmate
7 Financial Responsibility Program to pay his monetary
8 obligations by making payments of no less than \$25 per quarter.

9 Any amount not paid immediately or through the BOP
10 program shall be paid commencing 60 days prior to the
11 expiration of the defendant's term of supervised release --
12 excuse me -- shall be paid commencing 60 days after the
13 defendant's release from confinement in monthly payments of not
14 less than 10 percent of the defendant's gross monthly income.
15 All payments shall be satisfied no later than 60 days prior to
16 the expiration of the term of supervision.

17 I recommend the defendant be placed at FCI Englewood
18 for the programming and proximity to family members, and I
19 strongly recommend that he participate in the Residential Drug
20 Abuse Program. However, the length of sentence will really
21 facilitate that. I can include that recommendation and
22 hopefully that will go towards other drug abuse or drug
23 prevention programs administered by the BOP.

24 The defendant is advised that he has 14 days from the
25 date of entry of judgment to file any Notice of Appeal.

1 Other than reasons previously argued, is there any
2 reason why the sentence should not be imposed as stated?
3 Counsel for defendant?

4 MR. DECKENBACH: No further basis, Your Honor.

5 THE COURT: All right.

6 For the Government?

7 MR. COPPOM: No, Your Honor.

8 THE COURT: All right. I will impose judgment as
9 stated.

10 Good luck to you, Mr. Brochu.

11 We will stand in recess until 11:00.

12 (Proceedings concluded 10:39 a.m., May 20, 2021.)
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C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Diplomat Reporter, Federal Certified Realtime Reporter, and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 6th day of July, 2021.

/s/ *Janet Davis*

JANET DAVIS, RDR, FCRR, CRR
Federal Official Court Reporter